

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1042 OF 1992

Meenakshi M. Gurao)
at and post Guhagar,)
Tal. Guhagar, Dist. Ratnagiri.) Petitioner

Vs.

Krishna S. Rahate)
at and post Guhagar, Tal.)
Guhagar, Dist. Ratnagiri.) ... Respondent

Mr. P. D. Dalvi, Advocate for the Petitioner.

CORAM : D. G. DESHPANDE, J.

DATE : SEPTEMBER 19, 2006.

ORAL JUDGMENT

. Heard the advocate for the Petitioner. The Respondent though served, nobody is present on his behalf.

2. The petitioner Meenakshi is claiming to be the tenant of the disputed land. She applied to the tenancy Court i.e. Tahsildar Guhagar on 15-6-1988, under Section 7-B of the Bombay Tenancy & Agricultural Lands Act (hereinafter referred to as the Tenancy Act), to decide whether she is a tenant. As per the order of the Tahsildar, he recorded the statement of the landlord and the tenant and the Petitioner gave her oral evidence that she was the tenant. The Tahsildar also relied upon the so called admission of the landlord and allowed that application that she

should be declared as tenant from 1-4-1957. Against this order, present Respondent filed an appeal before the SDO Chiplun, under S. 74 of the Tenancy Act. That Appeal was allowed. Against the judgment in appeal, tenant preferred Revision before the Tribunal. The Revision came to be dismissed, and therefore, this petition on behalf of the tenant. The counsel for the Petitioner raised one point to assail orders of the SDO and MRT, Bombay. According to him, the order of the Tahsildar was dated 30th June, 1988 and the appeal before the SDO came to be filed on 27-9-1990 i.e. after about two years, to be specific 21 months and this was a time barred appeal and the period prescribed for filing the appeal under Section 71 of the Tenancy Act, was 60 days from the date of the order of Mamalatdar or Tahsildar. He contended that when admittedly appeal was time barred, the SDO has no powers to hear the appeal, in the absence of any application for condonation of delay. Mr. Dalvi, drew my attention to the decision of Supreme Court reported in **(2001)9 Supreme Court Cases 717, Ragho Singh Vs. Mohan Singh and Ors.** wherein in paragraph 6, Supreme Court held that since it is not disputed that the appeal before the Additional Collector was beyond time by 10 days and an application under Section 5 of the Limitation Act was not filed for

condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation.

3. It appears from the order of MRT that this point does not appear to have been raised before the MRT. In the Revision filed before MRT though the Petitioner has taken the point of limitation, it is not considered by the MRT. However, since it is a question going to the root of the matter. It requires consideration.

4. Apparently, the submission of the advocate for Petitioner that the SDO should not have entertained the appeal, unless it was accompanied by an application for condonation of delay, appears to be getting the support from the above case-law. However, that is not the end of the matter. The Petitioner before this Court is claiming to be a tenant of the disputed land from the tillers day i.e. 1-4-1957. She has filed application before the Tahsildar in the year 1988 i.e. after 31 years and surprisingly enough her entire case is based on oral evidence. Not a single copy of extract of revenue record i.e. 7-12 extract which shows in the cultivation column the name

of the tenant, was produced by the Petitioner. The period of 31 years is not a small period, but it is a very long years period. When not a singly entry is to be found in favour of the Petitioner, showing her name in the column of the person in possession of the disputed land and cultivating it as a tenant, the Tahsildar should have outright rejected her application. It is very easy to bead oral evidence of the matter, but the basic document of tenancy is the revenue record. The absence of the name of the Petitioner in the revenue record i.e. 7-12 extract for 31 years, alone should have been the sufficient ground to reject her application.

5. The counsel for the Petitioner, however, repeatedly harping upon the fact that in the statement of the landlord recorded by the Tahsildar shows that he has admitted that the Petitioner was the tenant. The appellate Court has noted in that regard that Petitioner's husband was a peon in the Tahsil office, who retired in 1988, and therefore, he found considerable substance in the contention of the Advocate for landlord that there was some foul play. Secondly, the Petitioner examined Shantaram Tukaram More who was selling tea before Tahsil office and obviously interested witness. Further the landlord

stated that he was suffering from paralysis. He has produced document in that regard, and therefore, he has denied to have made any statement before the Tahsildar.

6. Admittedly, the SDO has committed an error in entertaining the appeal. But now plaintiffs could not get rid of this matter, particularly in Writ Petition under Art. 227 of Constitution of India, when it is found that the order of the Tahsildar is nothing but a fraudulently obtained order. No further conclusion, but a collusion between Tahsildar and Petitioner, is evident from this order. It is surprising to note that even though crop statement for the year from 1957 till 1988 was not produced before the Tahsildar, Tahsildar gave a declaration that the Petitioner was a tenant. This is nothing but a fraud practiced by the Petitioner, and therefore, even if SDO has committed error in entertaining and allowing the appeal, the Court cannot shut its eyes to this course adopted by the Tahsildar. The order of the Tahsildar cannot be sustained. Therefore, exercising powers of superintendence under Art. 227, I set aside the order of the SDO and the consequent order of the MRT. The order of the Tahsildar though supports the Petitioner, having been obtained by fraud and suppression of

material facts or non production of material documents, is also required to be set aside and is hereby set aside. The Tahsildar shall hold an enquiry afresh now, after giving opportunity to both sides to prove their contentions. This order should be communicated to the Petitioner by producing the certified copy. The Tahsildar should give notices to all the concerned and record evidence afresh and then pass the orders, according to law. It is required to be noted that the Tahsildar should take into consideration the absence of crop statement from 1957 till 1988. Petition is disposed of accordingly.

. It is hoped that the Tahsildar who was working at that time is still not working as Tahsildar, but if he is there, the matter should not be entrusted to him.

[D. G. DESHPANDE, J.]